

EXHIBIT 36

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION,

Plaintiff,

v.

No.

U. S. DEPARTMENT OF AGRICULTURE,

2:20-cv-00041-

U.S. SMALL BUSINESS

DCLC-CRW

ADMINISTRATION, SECRETARY OF

AGRICULTURE, and ADMINISTRATOR

OF THE SMALL BUSINESS

ADMINISTRATION,

Defendants.

VIDEOCONFERENCE DEPOSITION OF

DANNY MANDELL

DATE: Monday, May 16, 2022

TIME: 9:26 a.m.

LOCATION: Remote Proceeding

Washington, D.C. 20005

REPORTED BY: Richard Livengood, Notary Public

JOB NO.: 5230091

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF ULTIMA SERVICES CORPORATION:

3 MICHAEL E. ROSMAN, ESQUIRE (by videoconference)

4 MICHELLE SCOTT, ESQUIRE (by videoconference)

5 Center for Individual Rights

6 1100 Connecticut Avenue Northwest, Suite 625

7 Washington, D.C. 20036

8 rosman@cir-usa.org

9 scott@cir-usa.org

10 (202) 833-8400

11

12 ON BEHALF OF DEFENDANTS U.S. DEPARTMENT OF

13 AGRICULTURE, U.S. SMALL BUSINESS ADMINISTRATION,

14 SECRETARY OF AGRICULTURE, and ADMINISTRATOR OF THE

15 SMALL BUSINESS ADMINISTRATION:

16 JULIET GRAY, ESQUIRE (by videoconference)

17 Department of Justice Civil Rights Division

18 Employment Litigation Section

19 150 M Street Northeast

20 Washington, D.C. 20530

21 juliet.gray@usdoj.gov

22

1 Q Please -- oh. You want me to -- okay. And
2 then you had a conversation with Ms. Stonebraker.

3 A Right. With both of my supervisors.

4 Q Both of your supervisors? So that would be
5 Matt. Now I've forgotten his last name. But -- him
6 and Ms. Stonebraker.

7 A I believe so. I believe it's Matt. I, I
8 just don't remember. There's so many changes in
9 supervisors, I don't know, I don't remember which is
10 which.

11 Q All right. But you had a conversation with,
12 you thought, two supervisors; is that right?

13 A Right. I mean, if we come up with that type
14 of situation, we always let our supervisors know
15 what's going on.

16 Q Okay. And did they give you any -- well,
17 tell me what happened in that conversation.

18 A I believe that conversation I told them that
19 we would have a, that we're going to probably get a
20 adverse impact after talking to Ms. Collins, meaning
21 that we're not going to be able to award an 8(a) award
22 under the SBA on that. And the question was, why

1 would there be an adverse impact? I explain -- I
2 asked Mr., Ms. Collins when the contract is ending
3 that we cannot do a task order against it anymore.
4 That was the same question my supervisor asked.

5 Q Okay. Did they -- did your supervisor say
6 anything else?

7 A No. Other than the fact that we did not
8 understand why there would be an adverse impact, if I
9 remember, that -- was the main thing that I remember
10 is that we, all three of us did not understand why
11 there would be an adverse impact on small businesses
12 that currently had a contract for the contract that
13 has ended. No more viable.

14 Q So is it your understanding that there, the
15 SBA cannot make or should not make a finding of
16 adverse impact on a small business if the contract
17 that the small business was fulfilling is ending?

18 A That's what I thought. That was my, my
19 understanding to myself.

20 Q And was that your supervisor's understanding
21 as well? Well, let me rephrase the question.

22 A Yes.

1 Q Did -- during the course of the conversation
2 that you had with your supervisors, did they say
3 anything that indicated that they had the same
4 understanding?

5 A I believe so. They didn't understand why.

6 Q Okay. All right.

7 A So.

8 Q All right. Why don't we go back to Exhibit
9 Share, and let's just take a look one brief moment
10 again at Exhibit 4. Okay. And this is a letter from
11 the district director, Terri Denison, to you,
12 basically saying that the SBA would not recommend
13 acceptance of the contract into the 8(a) program
14 because of adverse impact.

15 A Yes. That's what the letter's saying.

16 Q Were you done with your answer?

17 A Yes, sir.

18 Q Okay. Good. All right. So why don't we go
19 back to Exhibit Share. And this is to -- I'm sorry.
20 One more question. This is dated September 20; right?

21 A Yes. That's correct.

22 Q Okay. Let's go to Exhibit 5, please.

1 A Okay. I'm on Exhibit 6.

2 Q Okay. And if you could just identify this
3 document for us.

4 A It's an acceptance letter.

5 Q Okay.

6 A By the SBA. Allowing us to go ahead and
7 proceed and work with All -- All-Pro Placement
8 Services for that requirement.

9 Q Okay. And the acceptance letter says that
10 your letter indicated that it was a new 8(a)
11 requirement; right?

12 A Yes.

13 Q Okay. And that therefore there was no
14 adverse impact analysis that needed to be done; right?

15 A No.

16 Q I'm sorry. You're saying that's not right
17 or that there was no adverse impact analysis that
18 needed to be done?

19 A Oh. According to -- if I get an acceptance
20 letter that there was no adverse impact, that is
21 right.

22 Q Okay. All right. So were you still working

1 CERTIFICATE OF DEPOSITION OFFICER

2 I, RICHARD LIVENGOOD, the officer before
3 whom the foregoing proceedings were taken, do hereby
4 certify that any witness(es) in the foregoing
5 proceedings, prior to testifying, were duly sworn;
6 that the proceedings were recorded by me and
7 thereafter reduced to typewriting by a qualified
8 transcriptionist; that said digital audio recording of
9 said proceedings are a true and accurate record to the
10 best of my knowledge, skills, and ability; that I am
11 neither counsel for, related to, nor employed by any
12 of the parties to the action in which this was taken;
13 and, further, that I am not a relative or employee of
14 any counsel or attorney employed by the parties
15 hereto, nor financially or otherwise interested in the
16 outcome of this action.

Richard Livengood

17 RICHARD LIVENGOOD

18 Notary Public in and for the

19 State of Maryland

20
21 [X] Review of the transcript was requested.

22

1 Juliet Gray, Esquire
2 juliet.gray@usdoj.gov

May 28, 2022

4 Ultima Services Corporation v. US Department Of Agriculture Et Al
5 5/16/2022, Danny Mandell (#5230091)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com.

16

17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21

24

1 Ultima Services Corporation v. US Department Of Agriculture Et Al
2 Danny Mandell (#5230091)

ERRATA SHEET

4 PAGE 9 LINE 16 CHANGE change "Port" to Portland, Oregon

5

6 REASON Name of city is Portland not "Port"

7 PAGE 64 LINE 15 CHANGE "NSO" to "VOSB" Veteran Owned

8 Small Business

9 REASON wrong acronym

10 PAGE 85 LINE 13 CHANGE "no more viable" should be "no longer
11 viable"

111

12 REASON CONFUSION NOT VISIBLE ANYMORE

13 PAGE 131 LINE 9 CHANGE "water contract" should be "service contract"

14

15 REASON no such thing as a "water" contract

16 PAGE 131 LINE 14 CHANGE "is an S" should be "is an SB"

17

18 REASON SB - Small Business

19 PAGE 145 LINE 14 CHANGE add "performance" after "correct period -"

20

21 REASON should say: "correct period of performance"

22

Danny Mandell

June 15, 2022

24 Danny Mandell Date

25

1 Ultima Services Corporation v. US Department Of Agriculture Et Al
2 Danny Mandell (#5230091)

ACKNOWLEDGEMENT OF DEPONENT

4 I, Danny Mandell, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10

11 Danny Mandell

12 Danny Mandell Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 DAY OF _____, 20 ____.

16

17

18

19 NOTARY PUBLIC

20

21

22

23

24



U.S. Small Business
Administration

shelia.berry@sba.gov | 410-244-3331 | www.sba.gov/md
Baltimore District Office | 100 S. Charles St., Ste. 1201 | Baltimore, MD 21201

September 25, 2018

Danny C. Mandell
Contracting Officer
Natural Resources Conservation Service (NRCS)
U.S. Department of Agriculture
101 South Main Street
Temple, TX 76501-7601

Dear Mr. Mandell,

This letter is to serve as acceptance of the offer submitted by your agency on September 21, 2018. In accordance with Section 8(a) of the Small Business Act (15 USC 637(a)(1)) and the Federal Acquisition Regulation (FAR) Part 19.8, and the executed Partnership Agreement between the U.S. Small Business Administration (SBA) and the U. S. Department of Agriculture (USDA), SBA hereby accepts your offer of the requirement for administrative services in various Field and Area Office(s) throughout Mississippi on behalf of:

All Pro Placement Services, Inc
116 Old Padonia Rd suite D
Cockeysville, MD 21030

The estimated dollar value of this procurement (including all options) will be \$3,000,000.70. The assigned NAICS Code is 561110, with a corresponding size standard of 7.5 million. Our acceptance is certification of the named firm's eligibility to receive the above referenced requirement.

The offer letter indicates that this is a new 8(a) requirement. An analysis of this requirement in accordance with the provisions set forth in Title 13 of the Code of Federal Regulations (13 C.F.R. § 124.504(c)) was not conducted related to, Adverse Impact, based upon the procurement history revealed in the offer letter.

As stated, you have designated a North American Industry Classification System (NAICS) Code of 561110 for this requirement. This NAICS Code should not be changed without prior coordination with this office. The assigned SBA Requirement Number is 0373/18/806094/01. Please reference this number should you need to contact this office relative to this procurement. The SBA Requirement Number should also be referenced on any resultant contract award documents.

Pursuant to the executed Partnership Agreement the U. S. Department of Agriculture (USDA) is authorized to negotiate directly with the 8(a) BD Participant. SBA reserves the right to be present at an Agency's negotiations with the 8(a) BD Participant.

Exhibit
0006
Mandell

All SBA programs and services are extended to the public on a nondiscriminatory basis.

U. S. Department of Agriculture (USDA)

Under the terms and conditions of the Partnership Agreement, you are to execute and distribute one copy of the contract, including task orders, modifications, and purchase orders to our office within 15 business days of the award. The SBA must be consulted prior to any changes that affect the scope of the contract.

In addition, the U. S. Department of Agriculture (USDA) shall retain the responsibility for compliance with the limitations on subcontracting requirements and all applicable provisions of FAR Section 52.219-14. Upon detecting any violations of the Ostensible Subcontracting rule, procuring agencies should immediately notify the SBA's Headquarters office via an email to: BDManagement&TechnicalAssistance@sba.gov.

In the event that this requirement does not result in a contract award, please notify the SBA's Baltimore District Office.

If you have any questions regarding this acceptance letter, please contact Shelia Berry at: (410) 244-3331, or shelia.berry@sba.gov.

Thank you for your continued support of the 8(a) BD Program.

Sincerely,

Shelia Berry

Shelia Berry
Business Opportunity Specialist
8(a) Business Development Program



All SBA programs and services are extended to the public on a nondiscriminatory basis.

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